

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
IN CLERK'S OFFICE

2006 APR 14 P 12:32

ING LIFE INSURANCE AND ANNUITY)
COMPANY,)
Plaintiff)

v.)

KUMBIRAI CHIWARA USHE,)
FIDES PERDITA USHE AS MOTHER)
AND NATURAL GUARDIAN OF)
KUMBIRAI CHIWARA USHE,)

ZVIDZAI G. USHE,)

DUMAZILE Z. USHE,)

NTOMBIZODWA KUMALO-USHE)
(LAST SPOUSE OF SAMSON CHIWARA)
USHE), individually and as Administratrix)
of the ESTATE OF SAMSON CHIWARA)
USHE,)

Defendant)

U.S. DISTRICT COURT
DISTRICT OF MASS.

CIVIL ACTION NO. 04 CV 11571 ^{KPN} ~~GAO~~

MOTION FOR ORDER TO DISBURSE FUNDS TO FIDES PERDITA USHE,
MOTHER AND NATURAL GUARDIAN OF KUMBIRAI CHIWARA USHE

Pursuant to Local Rules 67.2 and 67.3, Defendant, Fides Perdita Ushe, hereby moves the Court for an Order directing the Clerk of Court to disburse the remaining funds from the court's registry funds related to this matter after disbursement from said funds to Plaintiff, ING Life Insurance and Annuity Company for their reasonable attorney's fees and costs incurred in prosecuting this action in accordance with a Release and Stipulation Judgment of the parties attached hereto. In support thereof, Fides Perdita Ushe shows the Court the following:

The funds at issue in the interpleader are the proceeds of an annuity account which the deceased, Samson Chiwara Ushe, had at ING under the account number G50000374 069447399 (the "Account") dating back to 1984. According to ING's records, interpleader defendants Kumbirai, Zvidzai and Dumazile Ushe were designated as the beneficiaries of the Account in the event of Samson's death. All the parties agree that there is no dispute that Kumbirai Ushe is entitled to at least one-third of the funds.

ING deposited the Account proceeds into the Court registry and requested that it be held in an interest-bearing account. On or about January 2006, the parties executed a Release and Stipulated Judgment in which they agreed, *inter alia*, that within ten (10) days of filing the fully-executed Release and Stipulated Judgment with the Court, ING would move the Court to disburse fund from the Account proceeds currently being held in the court's registry, an amount equal to ING's fair and reasonable attorneys' fees and expense in prosecuting this interpleader action, and to distribute to Fides Perdita Ushe as mother and natural guardian of Kumbirai Chiwara Ushe an amount equal to one-third of the balance of said funds after payment of said attorneys' fees and expenses. The executed Release and Stipulated Judgment are filed herewith. The instant Motion is in accordance with paragraph four of that Release and Stipulated Judgment, and Fides Perdita Ushe has attached hereto a proposed Order regarding disbursement of funds to her as mother and court appointed guardian of Kumbirai Chiwara Ushe.

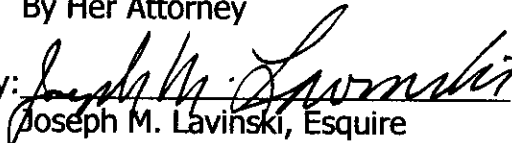
WHEREFORE, Defendant, Fides Perdita Ushe, as mother and court appointed guardian of Kumbirai Chiwara Ushe, respectfully requests that the Court Order disbursement to said Fides Perdita Ushe a sum equal to one-third of the amount remaining in the account after payment of ING's legal fees and expenses.

Date:

4/13/2006

Fides Perdita Ushe, Mother and
Guardian of Kumbirai Chiwara Ushe,
By Her Attorney

By:


Joseph M. Lavinski, Esquire

BBO# 288680

935 Main Street, Suite 203

Springfield, MA 01103

Phone (413) 739-9762

Fax (413) 739-9121

CERTIFICATE OF SERVICE


I, Joseph M. Lavinski, attorney for the defendant, Fides Perdita Ushe, Mother and Guardian of Kumbirai Chiwara Ushe, hereby certify that I have on this date mailed a copy of the foregoing document to all interested parties as follows:

Jane E. Crosby, Esquire, 20 Maple Street, Springfield, MA 01103, Counsel to Ntombizodwa-Ushe, Individually and as Administratrix of the Estate of Samson Chiwara Ushe, and Zvidzai Ushe and Dumazile Z. Ushe.

Melicent B. Thompson, Esquire, Litchfield Cavo, LLP, 40 Tower Lane, Suite 200, Avon CT 06001, counsel for ING Life Insurance & Annuity Company

Date:

4/13/2006


Joseph M. Lavinski, Esquire

RELEASE AND STIPULATED JUDGMENT

This Release and Stipulated Judgment is entered into this ____ day of January, 2006 between ING Life Insurance and Annuity Company (“ING”); Fides Perdita Ushe (“Fides”) the Court-appointed guardian of Kumbirai Chiwara Ushe, a minor (“Kumbirai”); Ntombizodwa Kumalo-Ushe (“Ntombizodwa”); Dumazile Z. Ushe (“Dumazile”); and Zvidzai Ushe (“Zvidzai”).

WHEREAS, ING brought an interpleader action under 28 U.S.C. § 1335 in the U.S. District Court for the District of Massachusetts. The funds at issue in the interpleader are the proceeds of an annuity contract that the now-deceased Samson Chiwara Ushe (“Samson”) had at ING under the account number G50000376 069447399 (“the Account”), dating back to 1984;

WHEREAS, according to ING’s records, interpleader defendants Kumbirai, Zvidzai, and Dumazile were designated as the beneficiaries of the Account in the event of Samson’s death. However, a dispute has arisen as to whether Kumbirai should be the sole beneficiary of the proceeds of the Account, pursuant to a December 19, 2000 divorce decree between Fides and the last Samson;

WHEREAS, ING, as the stakeholder, has deposited the stake into the Court registry and requested that it be held in an interest-bearing account. ING asserts no proprietary interest in this stake, although it does seek a fair and reasonable recovery of its attorney fees and expenses in this action from same;

WHEREAS, in a June 30, 2005 conference before the Court, the parties agreed that it would be in the best interests of each of them to fully and finally release, discharge, and dismiss ING from this matter in order to maximize the funds remaining in

the Account for distribution to the beneficiaries ultimately determined to be entitled to the Account proceeds or any portion thereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, it is stipulated and agreed as follows:

1. Fides Perdita Ushe on behalf of Kumbirai Chiwara Ushe, Ntombizodwa Kumalo-Ushe, Dumazile Ushe, and Zvidzai Ushe do, for themselves, and for their heirs, executors, administrators and assigns, hereby release and forever discharge ING and its past, present and future officers, directors, attorneys, shareholders, subsidiaries, affiliates, partners, employees, principals, agents, servants, representatives, predecessors, successors, and assigns of and from any and all actions, causes of action, claims, demands, liabilities, suits, controversies, proceedings, expenses, obligations, claims for loss, costs, charges, and attorneys' fees, which any of them now have or may have ever had against ING from the beginning of the world to the date of this Release and Stipulated Judgment, whether known or unknown, whether arising by statute, common law or otherwise, of whatsoever kind or nature, on account of or in any way growing out of ING's institution of this interpleader action, its payment of the Account proceeds into Court, and/or its dismissal from this matter, by consent of the parties, and with the Court's permission.

2. By executing this Release and Stipulated Judgment, the parties specifically acknowledge, agree and stipulate that ING has identified and provided notice to all persons who might have a legitimate interest in the stake, with due care, and that ING has discharged whatever responsibilities it may owe, if any, to all potential claimants, including those that might exist but that are present unknown to ING. According, upon

execution and filing of this Release and Stipulated Judgment, ING shall move the Court for an Order in accordance with this Release and Stipulated Judgment, establishing that ING is not and cannot be liable to any future, and/or unknown claimants against the stake on any account, or in any way growing out of ING's institution of this interpleader action, its payment of the Account proceeds into Court, its handling of the Account funds, and/or its dismissal from this matter.

3. The parties agree and stipulate that prior to distributing any portion of the Account to any Account beneficiaries, ING shall be reimbursed from the Account proceeds for its attorneys' fees and costs associated with this action. Accordingly, within ten (10) days of the execution and filing of this Release and Stipulated Judgment, ING shall move the Court for payment of those fees and costs directly to ING, out of the Account Proceeds.

4. The parties further agree and stipulated that Kumbirai is entitled to all the remaining funds in the Account after payment of ING's fees and expenses. Accordingly, within fifteen (15) days of execution and filing of this Release and Stipulated Judgment with the Court, Fides Ushe, through counsel, shall move the Court to distribute to Fides Ushe, as guardian of Kumbirai Ushe, all of the remaining funds in the Account after payment of ING's fees and expenses.

5. In executing this Release and Stipulated Judgment, the parties represent that they have proceeded with the advice of any attorney of their own choice, that they have read the terms of this Release and Stipulated Judgment, that the terms of this Release and Stipulated Judgment have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by

them. The parties further affirmatively represent that they have voluntarily entered into this Release and Stipulated Judgment and that no representations by them or their attorneys, agents or other representatives have been made which are not expressly set forth in this Release and Stipulated Judgment.

6. This Release and Stipulated Judgment constitutes the full and complete agreement between the parties hereto. It may be modified only by an authorized, executed written Amendment.

Dated: January , 2006

By: _____
Fides Ushe on behalf of
Kumbirai Ushe

By: _____
Joseph M. Lavinski, Esquire
Lavinski Law Offices
935 Main St., Ste. 203
Springfield, MA 01103
Attorneys for Kumbirai Ushe, c/o Fides Ushe

By: _____
Ntombizodwa Kumalo-Ushe

By: _____
Jane Crosby, Esquire
20 Maple St.
Springfield, MA 01103
Attorneys to Ntombizodwa-Ushe
Individually and as Administratrix of
the Estate of Samson Chiwara Ushe,
and to Dumazile Z. Ushe, and to
Zvidzai Ushe

By: _____
Dumazile Z. Ushe

By:  _____
Zvidzai Ushe

them. The parties further affirmatively represent that they have voluntarily entered into this Release and Stipulated Judgment and that no representations by them or their attorneys, agents or other representatives have been made which are not expressly set forth in this Release and Stipulated Judgment.

6. This Release and Stipulated Judgment constitutes the full and complete agreement between the parties hereto. It may be modified only by an authorized, executed written Amendment.

Dated: January , 2006

By: Fides P. Ushe
Fides Ushe on behalf of
Kumbirai Ushe

By: Joseph M. Lavinski
Joseph M. Lavinski, Esquire
Lavinski Law Offices
935 Main St., Ste. 203
Springfield, MA 01103
Attorneys for Kumbirai Ushe, c/o Fides Ushe

By: Ntombizodwa Kumalo-Ushe
Ntombizodwa Kumalo-Ushe

By: Jane Crosby
Jane Crosby, Esquire
20 Maple St.
Springfield, MA 01103
Attorneys to Ntombizodwa-Ushe
Individually and as Administratrix of
the Estate of Samson Chiwara Ushe,
and to Dumazile Z. Ushe, and to
Zvidzai Ushe

By: Dumazile Z. Ushe
Dumazile Z. Ushe

By: _____
Zvidzai Ushe

Lavinski

Joseph M. Lavinski
Springfield, Massachusetts 01103

Joseph M. Lavinski
Attorney at Law

Telephone: (413) 739-9762
FAX: (413) 739-9121

April 26, 2006

John Stuckenbruck
U.S. District court
1550 Main Street
Springfield, MA 01103

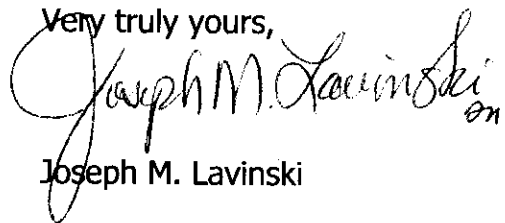
RE: ING Life Insurance v. Ushe et al
Docket No. 04CV11571-~~GAO~~ KPN

Dear Mr. Stuckenbruck:

Please find enclosed the executed release forwarded for filing relative to the above-captioned case. Unfortunately, I did not have the release prior to the allowance of my previous motion, but would like the release to be part of the case record.

Thank you for your cooperation in this matter.

Very truly yours,


Joseph M. Lavinski

JML/dm
Enclosure